

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 30TH JULY 2007 / 8TH SRAVANA 1929

Crl.MC.No. 2438 of 2007()

CC.759/2003 of JUDL. MAGISTRATE OF FIRST CLASS COURT-III,
TRIVANDRUM
.....

PETITIONER: ACCUSED NO.1 IN CC NO.287/1999

PRATHAPAN, S/O. MURALEEDHARAN,
RESIDING AT M.S.VILASAM VEEDU, KOTTIYAM JUNCTION,
KAZHUTHALACHERI, KOLLAM DISTRICT.

BY ADV. SRI.P.GOPAKUMARAN NAIR
SRI.C.S.DIAS
SRI.MANU V.

RESPONDENTS: COMPLAINANT IN CC NO.287/1999

STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 30/07/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R. BASANT, J.

Crl.M.C.No. 2438 of 2007

Dated this the 30th day of July, 2007

ORDER

The petitioner is the first accused in a crime for offence punishable, inter alia, under Section 324 r/w. 149 I.P.C. Altogether there were five accused persons. Three of them, including the petitioner, entered appearance. Two of them were absconding. Trial against the available accused was conducted and by judgment dt.30.7.2003 in C.C. 287 of 1999 the three accused, who faced trial, including the petitioner, were found not guilty and acquitted, it is submitted. But in the judgment of acquittal recorded by the learned Magistrate, it is noted that accused 2, 4 and 5 are found not guilty and acquitted and the case against accused 1 and 3 is re-filed. Consequently warrants of arrest are being issued against the petitioner, the first accused in the charge. According to the petitioner, the original ranks shown in the F.I.R. was subsequently altered when the final report was filed. But the ranking in the F.I.R. was continued to be followed in the proceeding paper maintained by the learned Magistrate.

2. To cut short a long story short, the contention of the petitioner is that he has already been tried, found not guilty and acquitted. But because of an error in showing the rank of the petitioner in the proceedings, it is now made to appear that he is not acquitted and the proceedings against him must continue. It is certainly for the petitioner to appear before the learned Magistrate and satisfy the learned Magistrate that such an error had crept into the proceedings. Without and before doing that, I find no merit in the attempt of the petitioner to come to this Court and seek directions under Section 482 Cr.P.C. The petitioner must appear before the learned Magistrate and satisfy the learned Magistrate of the clerical error as shown above that has crept in to the judgment rendered. The learned Magistrate must consider whether it was only a clerical error in mis-describing the rank of the petitioner. If it was such an error, needless to say, Section 362 Cr.P.C. cannot stand in the way of the learned Magistrate carrying out the requisite correction.

3. This Crl.M.C. is dismissed with the above observations.

